

Translation

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PATENT COOPERATION TREATY

To:

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REC'D 24 MAY 2005

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43 bis.1)

Date of mailing

(day/month/year)

0 . 0 5 . 2 0 0 5

Applicant's or agent's file reference

DF0421161P

FOR FURTHER ACTION

see paragraph 2 below

International application No.

PCT/CN2005/000159

International filing date (day/month/year)

04. Feb 2005 (04. 02. 2005)

Priority date (day/month/year)

04. Feb 2004 (04. 02. 2004)

International Patent Classification (IPC) or both national classification and IPC

IPC7: H04L12/00

Applicant

HUAWEI TECHNOLOGIES CO., LTD. ET AL

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No.II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i)with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No.VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No.VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/CN
The State Intellectual Property Office, the
P.R.China 6 Xitucheng Rd., Jimen Bridge,
Haidian District, Beijing, China 100088
Facsimile No. 86-10-62019451

Date of completion of this opinion

13. Apr. 2005 (13. 04. 2005)

Authorized officer

WANG Hongli



Telephone No. (86-10)-62084525

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/CN2005/000159

Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of:

- the international application in the language in which it was filed
 a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of :

- a. type of material
 a sequence listing
 table(s) related to the sequence listing

- b. format of material
 on paper
 in electronic form

- c. time of filing/furnishing
 contained in the international application as filed
 filed together with the international application in electronic form
 furnished subsequently to this Authority for the purposes of search

3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CN2005/000159

Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
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1. Statement:

Novelty (N)	Claims <u>1-16</u>	YES
	Claims _____	NO
Inventive step (IS)	Claims <u>2-5, 7-16</u>	YES
	Claims <u>1, 6</u>	NO
Industrial applicability (IA)	Claims <u>1-16</u>	YES
	Claims _____	NO

2. Citations and explanations

The invention relates to a method for upgrading the communication device via the server in the communication system.

The document cited in the Search Report includes:

D1: CN1249112A

D2: CN1358050A

D3: CHEN Xiaosu, LI Hua "An automatically upgrading method orienting to C/S application system"

About claim 1, D1 discloses a method and device for remotely upgrading the control software of the cellular phone (see abstract, page1 line22-29, FIG 1), wherein the server stores the new upgrade software for the cellular phone, the cellular phone downloads the new upgrade software from the server and loads the software. The difference between the D1 and claim 1 is that "back up the configuration data of the communication device to the server; the configuration data backed up in the server is resumed to the communication device". But above difference is disclosed by D2 (see abstract) or D3 (see page15-19). So the claim 1 does not have the inventive step and does not comply with PCT article 33(3).

About claim 6, the features is disclosed by D2. So the claim 6 does not have the inventive step and does not comply with PCT article 33(3).

Claims 2-5, 7-16 comply with PCT article 33(2), (3), that is, have the novelty and inventive step.

Claims 1-16 comply with PCT article 33(4), having industrial applicability.